the right of a disbarred attorney to take office as state's attorney is considered. Defendant Egan received a majority of the votes cast for state's attorney in his county, and was given a certificate of election. He had formerly been a licensed attorney in the state, but was disbarred from practicing therein shortly before his election. It was practically admitted that the judgment of disbarment would prevent his appearance in the courts of record in the state, but it was claimed that this duty might be performed by a deputy. The court held, however, that defendant could not be allowed to dictate and oversee this important part of the work of his office while prohibited from performing it in person. It was also alleged that under the Constitution the only qualification imposed was that the state's attorney should be "learned in the law," and consequently need not be an attorney at all. The court says that the use of the word "attorney" in the title of the office, "state's attorney," definitely indicates that the office should only be filled by one regularly admitted to practice in the courts, and that the phrase "learned in the law" includes an acquaintance with rules of conduct commonly known as "legal ethics;" that, it having been judicially determined that appellant had disobeyed these rules, it would be conclusively presumed that their violation had been through ignorance; and that, therefore, the judgment of disbarment practically decided that defendant was certainly not learned in that branch of the law.

Intoxicating Qualities of Malt Liquors Need Not Be Shown.—John Luther was convicted in a District Court of Nebraska of the unlawful keeping and sale of malt liquors without license. On appeal to the Supreme Court, his conviction was reversed (Luther *v.* State, 114 Northwestern Reporter, 411) because it was not shown that the liquors sold were intoxicating in character. The attorney general filed a motion for rehearing, which was granted, and in an opinion reported in 120 Northwestern Reporter, 125, the Supreme Court reverses its former holding, and decides that under the law forbidding the sale of "malt, spirituous, or vinous liquors, or any intoxicating drinks," it is not necessary for the state to prove intoxicating qualities of malt liquor in order to sustain a conviction.

Sunday Baseball.—An interesting history of the National American game is given by the Supreme Court of Kansas in State *v.* Prather, 100 Pacific Reporter, 57. A statute of Kansas provides punishment for "horse racing, cockfighting, or playing at cards or game of any kind on the first day of the week, commonly called Sunday." Prather was charged with playing baseball on Sunday, and convicted of an offense under this statute. He contended that the word "game" as used in the statute should be construed only to include sports of a similar character to those specifically enumerated, and should therefore be held to exclude baseball. The Supreme Court takes the same

view of the matter. It discusses the rights and history of the game from its origin in 1839, and following the decision of the Missouri Supreme Court in Ex parte Neet, 157 Mo. 527, 57 S. W. 1025, 80 Am. St. Rep. 638, says that it is a game of a character entirely distinct from those specifically enumerated in the statute, and, being one which is urged upon the youth of the land as tending to increase health and physical development, the ban of the law should not be placed upon it unless it be shown that the Legislature specially so intended; and as the statute is penal in nature, requiring a strict construction, it is held not to prevent Sunday baseball.

Seizure of Intoxicating Liquors in Hands of Express Company.—In the case of the American Express Co. *v.* Mullins, 29 Supreme Court Reporter, 381, it appeared that Mullins had delivered certain liquor to the express company in the state of Kentucky for transportation to and delivery in Kansas in violation of the laws of the latter state. On arrival of the goods at destination, they were seized by a sheriff under a warrant issued by a District Court in Kansas, and notice given to show cause why they should not be forfeited and destroyed. The express company notified the shipper of the proceedings taken, and he promised to defend, but apparently did not do so, and the Kansas authorities destroyed the liquor. The present action was then instituted against the express company to recover for the loss of the goods, on the theory that it was its duty to defend the search and seizure proceedings, and that they were without warrant of law and void. The United States Supreme Court held that the shipper having received notice of the proceedings and having promised to defend, the express company was thereby relieved from this duty. As against the contention that the Kansas judgment was wrong and in conflict with a prior decision of the Supreme Court of the United States, it was held to be conclusive and unimpeachable on the theory of being based upon a mistake of law.

Cancellation of Instruments—Bill—Sufficiency—Mental Incapacity.—As held in Towner *v.* Towner, 64 S. E. 732 (Supreme Court of Appeals of West Virginia, April 20, 1909), a bill to set aside and cancel a deed of trust on the ground of mental incapacity in the grantor to execute it, charging, with reasonable certainty as to time and relation to the event, committal of the plaintiff to an asylum for the insane, and not admitting or in any way disclosing a discharge therefrom or a lucid interval, is sufficient as to the allegation of mental incompetency. It is not essential to the sufficiency of such a bill that it allege fraud or undue influence in procurement of the execution of the deed.

Curtesy—Bar—Divorce from Bed and Board.—It is held in Hartigan *v.* Hartigan, 64 S. E. 726 (Supreme Court of Appeals of West